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## Dominion Energy's Record in Virginia A Cautionary Tale for South Carolina Decision Makers

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The old adage, "If a deal sounds too good to be true, it probably is," should serve as a warning to decision makers in South Carolina considering Dominion Energy's offer to merge with SCANA.

Before South Carolina accepts Dominion Energy's "promise" to offer SCANA ratepayers an average cash payment of \$1,000 as well as lower rates, ask Dominion about the \$1 billion it fleeced from Virginia ratepayers and please consider other details from Dominion's track record in Virginia.

### 1. Dominion Rate Scamming

Repeatedly over the past several years Dominion has used its influence with the Virginia General Assembly to bypass or short circuit review of Rate Adjustment Clauses (RAC) by the Virginia State Corporation Commission (SCC), the body that regulates electric utilities in Virginia.

- In 2014, even before securing SCC or Nuclear Regulatory Commission approval for a new nuclear reactor (North Anna 3) in Virginia, Dominion received Virginia General Assembly approval to recover \$300 million for development costs of the reactor from its Virginia ratepayers. (SB459)<sup>1</sup>
- In 2015, Senate Bill 1349 allowed Dominion to retain its ratepayer overcharges estimated to amount to as much as \$1 billion over the period 2015-2020 by blocking the State Corporation Commission from ordering refunds. Even before this bill passed, state law crafted by Dominion allowed it to retain 30% of all overcharges.<sup>2</sup>
- This year, in response to increasing public criticism over the \$1 billion in overcharges Dominion Energy was reaping, it drafted legislation which used "grid modernization" to justify retention of most of these and future overcharges while

<sup>1</sup> Proposed utility law could have big impact (Richmond Times Dispatch (Feb 1, 2014) [http://www.richmond.com/business/proposed-utility-law-could-have-big-impact/article\\_cc13dfaf-dd41-5dc9-846b-880e3ab0547a.html](http://www.richmond.com/business/proposed-utility-law-could-have-big-impact/article_cc13dfaf-dd41-5dc9-846b-880e3ab0547a.html))

<sup>2</sup> State Corporation Commission upholds regulatory break benefiting Dominion, Richmond Times Dispatch (July 1, 2016) [http://www.richmond.com/news/virginia/government-politics/state-corporation-commission-upholds-regulatory-break-benefiting-dominion/article\\_45ae9132-0f9f-5c3a-87c9-57f58e1293f0.html](http://www.richmond.com/news/virginia/government-politics/state-corporation-commission-upholds-regulatory-break-benefiting-dominion/article_45ae9132-0f9f-5c3a-87c9-57f58e1293f0.html)

limiting the SCC's scrutiny of future Rate Adjustment Clauses for these so-called grid improvements. The legislation, as originally drafted by Dominion, would have also allowed Dominion to "double-dip," charging its customers twice for the same infrastructure investments<sup>3</sup>. Public scrutiny and resistance resulted deletion of the "double dip" provision.<sup>4</sup> The Virginia Attorney General and some large industrial customers are still on record as opposing the legislation as contrary to the interests of ratepayers (SB966).<sup>5</sup> The legislation effectively puts Dominion in charge of determining which grid modernization investments to pursue, with the likely result that projects will be chosen according to how much profit they deliver to the company rather than their benefits to customers. As one legislator, Delegate Mark Keam noted, 'the legislation includes language declaring many of Dominion's spending decisions to be **"deemed in the public interest,"** **"deemed reasonable and prudent"** or **"deemed cost effective."** This means that SCC's job going forward will simply be to rubber stamp Dominion's decisions rather than independently scrutinizing the proposals' merits.<sup>6</sup>

In using its influence with the General Assembly to avoid or minimize review by the State Corporation Commission, Dominion's bills increased 30% between 2006 and 2016. 42% of that increase was due to Rate Adjustment Clauses.<sup>7</sup>

## 2. Dominion Energy's Performance Failures

South Carolina prides itself on its ability to attract high tech manufacturers and other industry leaders. Dominion Energy's presence in South Carolina could serve as an obstacle to innovation that might slow South Carolina's economy as it has in Virginia.<sup>8,9</sup>

<sup>3</sup> Testimony of SCC staffer Kimberly B. Pate explaining "double dipping" <https://youtu.be/GxQIHUck>.

<sup>4</sup> Facing new scrutiny, powerful utility turns to old friends AP (Jan 29, 2018)  
<https://www.usnews.com/news/best-states/virginia/articles/2018-02-12/house-changes-utility-rewrite-bill-to-prevent-double-dipping>

<sup>5</sup> Bill overhauling utility regulation advances; Richmond Times Dispatch (Feb 26, 2018) [http://www.richmond.com/news/virginia/government-politics/general-assembly/with-few-remaining-detractors-bill-overhauling-utility-regulation-advances/article\\_044a7c03-1745-599c-987a-aa88274ab10s.html](http://www.richmond.com/news/virginia/government-politics/general-assembly/with-few-remaining-detractors-bill-overhauling-utility-regulation-advances/article_044a7c03-1745-599c-987a-aa88274ab10s.html)

<sup>5</sup> Why I'm breaking up with Dominion Energy: Wash Post (March 15, 2018) [https://www.washingtonpost.com/blogs/all-voices/all-voices-local/wp/2018/03/15/why-im-breaking-up-with-dominion-energy/?hpid=hp\\_hp-top-table-main-dominion%3Aenergy%3Ahomepage%2Fstory&utm\\_term=.1a902781c48c](https://www.washingtonpost.com/blogs/all-voices/all-voices-local/wp/2018/03/15/why-im-breaking-up-with-dominion-energy/?hpid=hp_hp-top-table-main-dominion%3Aenergy%3Ahomepage%2Fstory&utm_term=.1a902781c48c)

7 THE MYTH OF VIRGINIA'S RATE UTOPIA-A Comparison of Rates, Riders, and Bills: Virginia Poverty  
Law Center (May 2017) [http://www.vplc.org/wp-  
content/uploads/2017/05/VPLC\\_EnergyReport\\_05032017.pdf](http://www.vplc.org/wp-content/uploads/2017/05/VPLC_EnergyReport_05032017.pdf)

<sup>a</sup> New report predicts lackluster economic growth in Virginia Richmond Times Dispatch (Dec 2, 2016) [http://www.dailyprogress.com/news/economy/new-report-predicts-lackluster-economic-growth-in-virginia/article\\_28dab278-b900-11e6-93bd-37bc98df235b.html](http://www.dailyprogress.com/news/economy/new-report-predicts-lackluster-economic-growth-in-virginia/article_28dab278-b900-11e6-93bd-37bc98df235b.html)

<sup>9</sup> Virginia job growth lagging rest of U.S. Richmond Times Dispatch (March 13, 2018) [http://www.richmond.com/business/local/virginia-unemployment-rate-held-steady-at-percent-in-january/article\\_ae21c45c-512b-5636-9f11-e0f91a55de1c.html](http://www.richmond.com/business/local/virginia-unemployment-rate-held-steady-at-percent-in-january/article_ae21c45c-512b-5636-9f11-e0f91a55de1c.html)

Virginia's lackluster growth is due in part to the federal budget sequester. However, you can't take billions of dollars out pockets of ratepayers and the economy of a state to benefit one company and not impact economic growth. *Alme*

- Several large industrial customers brought a legal challenge to Dominion's 2015 legislation fleecing ratepayers for \$1 billion, but the Virginia Supreme Court deferred to the General Assembly and upheld the legislation.<sup>10</sup>
- Not unlike SCANA, Dominion unwisely pursued the development of a new nuclear reactor until 2017, which at \$19 billion, would have been the most expensive power plant ever developed.<sup>11</sup> With strong objections from the State Corporation Commission staff and the Virginia Attorney General's office<sup>12</sup>, the SCC's approved 2015 Integrated Resource Plan prohibited Dominion from any further expenditures other than permitting expenses on the project.<sup>13</sup> Upon securing its license for the new reactor from the NRC in May 2017, Dominion pledged to the SCC that it would cease further efforts to develop the new reactor for the foreseeable future. No doubt the experiences of SCANA and Southern Company prompted Dominion to delay its North Anna 3 reactor plans indefinitely.
- Virginia ranks 29th among states in energy efficiency according to the American Council for an Energy Efficient Economy. South Carolina ranks 42nd.<sup>14</sup> Virginia's poor rating is due to a combination of Dominion's resistance to energy efficiency legislation and the SCC's reluctance to approve efficiency measures.
- While job growth in the renewable energy sector surged across the country, Virginia's laws leaving renewable energy development almost exclusively under the control of its largest utility, Dominion, limited economic and job growth in this emerging sector.<sup>15</sup> Virginia ranks 37th in installed utility scale solar according to the National Renewable Energy Laboratory Open PV Project rankings.<sup>16</sup>

<sup>10</sup> Virginia Supreme Court upholds law freezing electric rate reviews, but with strong dissent (Sept 14, 2017) [http://www.richmond.com/news/virginia/government-politics/general-assembly/virginia-supreme-court-upholds-law-freezing-electric-rate-reviews-but/article\\_c70c980c-ca7d-5cfc-8a43-7dfa5d2b2f46.html](http://www.richmond.com/news/virginia/government-politics/general-assembly/virginia-supreme-court-upholds-law-freezing-electric-rate-reviews-but/article_c70c980c-ca7d-5cfc-8a43-7dfa5d2b2f46.html)

<sup>11</sup> North Anna 3 would be most expensive nuclear reactor ever built in U.S.; Richmond Times Dispatch (July 12, 2016) [http://www.richmond.com/business/economist-north-anna-would-be-most-expensive-nuclear-reactor-ever/article\\_80ce9fdb-df7f-5390-8f94-97b24615a0f9.html](http://www.richmond.com/business/economist-north-anna-would-be-most-expensive-nuclear-reactor-ever/article_80ce9fdb-df7f-5390-8f94-97b24615a0f9.html)

<sup>12</sup> Va. attorney general's office says Dominion should abandon third North Anna reactor (Oct 21, 2015) [http://www.richmond.com/news/virginia/va-attorney-general-s-office-says-dominion-should-abandon-third/article\\_ecee574f-77af-5d7f-8b7f-7cf3de60e130.html](http://www.richmond.com/news/virginia/va-attorney-general-s-office-says-dominion-should-abandon-third/article_ecee574f-77af-5d7f-8b7f-7cf3de60e130.html)

<sup>13</sup> SCC Final Order on Dominion Energy IRP (Dec 30, 2015) <http://www.scc.virginia.gov/docketsearch/DOCS/369z011.PDF>

<sup>14</sup> The State Energy Efficiency Scorecard, ACEEE <http://aceee.org/state-policy/scorecard>

<sup>15</sup> The State of Solar in the Southeast, Southern Environmental Law Center, <https://www.southernenvironment.org/the-state-of-solar>

<sup>16</sup> <https://openpv.nrel.gov/rankings>

- Dominion secured the right to develop up to 2000 MW offshore wind power off the coast of Virginia in 2013 and won a grant from the US DOE to install a 12 MW pilot offshore wind project by 2017. However, Dominion failed to follow through with this project and lost the \$40 million DOE grant for this pilot project.<sup>17</sup> Only in the past year, has Dominion revived its interest in developing offshore by partnering with Orsted to proceed with the 12 MW pilot project.<sup>18</sup> Meanwhile, Dominion has dragged its feet on developing the 2,000 MW commercial lease area and did not include any commercial-scale offshore wind development in its 2017 Integrated Resource Plan.
- Virginia currently ranks poorly in its grid reform efforts compared to other states. A November 2017 report of the GridWise Alliance placed Virginia 46th in the country in its implementation of policies to advance and encourage grid modernization.<sup>19</sup> Despite this poor track record, Dominion's influence with the General Assembly resulted in the passage of the so-called "Grid Transformation and Security Act" that as previously noted limited the oversight of the SCC and largely deferred to Dominion's judgment as to the nature and expense of future projects that it would be characterized as grid modernization. As one legislator noted, *the legislation includes language declaring many of Dominion's spending decisions to be "deemed in the public interest," "deemed reasonable and prudent" or "deemed cost effective."* This means that SCC's job going forward will simply be to rubber stamp Dominion's decisions rather than independently scrutinizing the proposals' merits.<sup>20</sup>

With the advances coming in the electricity sector including renewables, demand response and battery technology, states need to remain open to technological changes or risk lagging behind in the innovation occurring in the important energy sector. Dominion's poor record of innovation in Virginia is already costing the state in jobs and rising energy costs.

<sup>17</sup> DOE pulls \$40M in funding for Dominion's offshore wind pilot (May 31, 2016)

<https://www.utilitydive.com/news/doe-pulls-40m-in-funding-for-dominions-offshore-wind-pilot/420053/>

<sup>18</sup> Dominion Energy moving forward on offshore wind project with DONG Energy as partner

<https://us.orsed.com/en/News-Archive/2017/08/Dominion-Energy-moving-forward-on-offshore-wind-project-with-DONG-Energy-as-partner>

<sup>19</sup> GridWise Alliance, Clean Edge, Navigant, Grid Modernization Index 4, November 2017, pp 18-19, available at [http://www.gridwise.org/resources\\_gmi.asp](http://www.gridwise.org/resources_gmi.asp). The overall index also includes ratings for customer engagement and grid operations, and Virginia ranks somewhat better (31st) but still at the low end of the spectrum when all three ranking categories are considered.

<sup>20</sup> Why I'm Breaking Up with Dominion; Washington Post (March 15, 2018)

[https://www.washingtonpost.com/blogs/all-voices-are-local/wp/2018/03/15/why-im-breaking-up-with-dominion-energy/?utm\\_term=.167c56952d8d](https://www.washingtonpost.com/blogs/all-voices-are-local/wp/2018/03/15/why-im-breaking-up-with-dominion-energy/?utm_term=.167c56952d8d)

### 3. Corrupting impact of influence peddling by Dominion Energy

Dominion Energy's dominance over the Virginia political process is the subject of political lore and never-ending jokes<sup>21</sup>. In a state with no limits on campaign contributions, "Dominion Energy is already known as the largest corporate contributor in Virginia politics. But outside of the company's giving, individual executives and employees bundle donations to state lawmakers from their own pockets in an artful display of power."

"In addition to big donations to state lawmakers from the corporation's political action committee, executives like Chairman, President and CEO Thomas F. Farrell II and Senior Vice President-Regulatory Affairs Thomas P. Wohlfarth complement that with political giving of their own - sometimes on the same day."<sup>22</sup> As was demonstrated in the preceding examples, Dominion wields its political might to the detriment of ratepayers and the public, effectively regulating itself despite its status as a regulated public utility. Its abuses of that power are evident in a number of incidents that have raised ethical concerns in a state with minimal ethics requirements.

- Dominion is not shy about letting legislator recipients of its largess know the loyalty it expects in return. "When the Democratic Party of Virginia publicly criticized a Republican state senator a few years ago for being too cozy with Dominion Energy, the state's biggest corporate political donor vented to one of its most reliable political allies."

"I was very disappointed to see this, especially considering how our company has supported Democrats over the years," Dominion executive Bob Blue wrote in an email to Senate Democratic Leader Dick Saslaw. "As you know, many of us have been personal supporters as well."<sup>23</sup> Senate Democratic Leader Dick Saslaw has received approximately \$350,000 from Dominion and its executives over the past 15 years.

Dominion Energy Virginia, the regulated utility entity serving Virginia, will be a natural gas customer of its parent company Dominion Energy, the controlling partner in the construction of the Atlantic Coast Pipeline. Through its regulated utility subsidiary, Dominion Energy will be able to pass on to its captive customer base the capital costs of the pipeline through higher prices for the natural gas transmitted through this new pipeline. One analyst has testified before the SCC

<sup>21</sup> 'Reverse Robin Hood' roasted on House floor; Richmond Times Dispatch (March 8, 2018) [http://www.richmond.com/news/virginia/governor-must-act-on-utility-bill-friday-reverse-robin-hood/article\\_abf19d86-df04-5028-a822-eddfaa9de97a.html](http://www.richmond.com/news/virginia/governor-must-act-on-utility-bill-friday-reverse-robin-hood/article_abf19d86-df04-5028-a822-eddfaa9de97a.html)

<sup>22</sup> Dominion executives bundle donations to Virginia lawmakers' campaign accounts (Oct 13, 2017) [http://www.richmond.com/news/special-report/dominion/dominion-executives-bundle-donations-to-virginia-lawmakers-campaign-accounts/article\\_2dc5e500-ae9e-11e7-825f-cf7d0372e492.html](http://www.richmond.com/news/special-report/dominion/dominion-executives-bundle-donations-to-virginia-lawmakers-campaign-accounts/article_2dc5e500-ae9e-11e7-825f-cf7d0372e492.html)

<sup>23</sup> Facing new scrutiny, powerful utility turns to old friends, Associated Press (January 29, 2018) <https://apnews.com/c954e09470254d6c95edd4ff78c43255>

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that the Atlantic Coast Pipeline could add as much as \$2.3 billion in unnecessary expense to Virginia ratepayers' electricity bills.<sup>24, 25</sup> Litigation is pending relating to this self-dealing. If Dominion Energy merges with SCANA, a similar self-dealing scenario could play out in South Carolina at the expense of ratepayers.

- o In 2015, when the Virginia General Assembly passed Dominion legislation allowing it keep up to \$1 billion in ratepayer overcharges, Dominion actually convinced two charities to which it contributes that this legislation would save their low-income clients money, and had them testify for the bill.<sup>26</sup> Dominion has even used ratepayer funds to direct contributions to the favored charities of key legislative leaders. *"Virginia residents have been billed tens of thousands of dollars to pay for donations that the state's most powerful electricity company has made to politically connected charities, according to company records obtained by The Associated Press."*  
*"Recent donations by Dominion Resources Inc. subsidized by customers include a \$10,000 gift to a college that was solicited by a powerful state lawmaker who is also the school's paid fundraiser, as well as a \$40,000 donation to a tort reform group that pushed for business-friendly legislation with the help of a longtime Dominion lobbyist, the records show."*<sup>27</sup> Although legal under state law, shortly after this article appeared in 2015, Dominion Energy announced that it had ceased this practice.
- o In the 2018 legislative session, news coverage disclosed that Dominion and its CEO, Tom Farrell, had made large charitable contributions to the non-profit where one of the legislators sponsoring Dominion's Grid Modernization legislation is employed. Democratic lawmaker Lamont Bagby who sponsored the Dominion Energy bill *"is the director of operations for a small charity that received five- and six-figure donations from company CEO Tom Farrell and the company's foundation."*<sup>28</sup>

<sup>24</sup> Dominion doesn't deny preparing to charge customers \$2B for pipeline construction (SELC, Sept 27, 2017) <https://www.southernenvironment.org/news-and-press/news-feed/dominion-doesnt-deny-preparing-to-charge-customers-2b-for-pipeline-construction>

<sup>25</sup> Dominion fails in attempt to bar testimony on pipeline's potential \$2.3 billion hit for ratepayers; Richmond Times Dispatch (March 12, 2018) [http://www.richmond.com/news/virginia/government-politics/dominion-fails-in-attempt-to-bar-testimony-on-pipeline-s/article\\_1d1b3914-fd12-569e-9c58-77c82a0ab032.html](http://www.richmond.com/news/virginia/government-politics/dominion-fails-in-attempt-to-bar-testimony-on-pipeline-s/article_1d1b3914-fd12-569e-9c58-77c82a0ab032.html)

<sup>26</sup> Senate committee approves bill to loosen Dominion oversight, Richmond Times Dispatch (Feb 2, 2015) [http://www.richmond.com/business/local/senate-committee-approves-bill-to-loosen-dominion-oversight-freeze-some/article\\_1d35f9d2-fd17-5844-b3e3-fc15de25f0ba.html](http://www.richmond.com/business/local/senate-committee-approves-bill-to-loosen-dominion-oversight-freeze-some/article_1d35f9d2-fd17-5844-b3e3-fc15de25f0ba.html)

<sup>27</sup> Dominion's donations partially subsidized by its customers, Associated Press (August 22, 2015) [http://www.richmond.com/business/dominion-s-donations-partially-subsidized-by-its-customers/article\\_999a25c0-789b-5e09-b9e9-17b65c899007.html](http://www.richmond.com/business/dominion-s-donations-partially-subsidized-by-its-customers/article_999a25c0-789b-5e09-b9e9-17b65c899007.html)

<sup>28</sup> Dominion and CEO Tom Farrell gave large charitable donations to center where key lawmaker works, Richmond Times Dispatch (Jan 23, 2018) [http://www.richmond.com/news/virginia/government-politics/general-assembly/dominion-and-ceo-tom-farrell-gave-large-charitable-donations-to/article\\_8360a62f-5743-5fd6-bde4-3b7e0f01a42c.html](http://www.richmond.com/news/virginia/government-politics/general-assembly/dominion-and-ceo-tom-farrell-gave-large-charitable-donations-to/article_8360a62f-5743-5fd6-bde4-3b7e0f01a42c.html)

- Three sponsors of the 2018 "grid modernization" legislation in leadership positions, Democrat Dick Saslaw and Republicans Senator Frank Wagner and Delegate Terry Kilgore have received about \$700,000 in campaign contributions from the company and its executives since 2003, according to an analysis of data collected by the Virginia Public Access Project. The company, its executives and lobbyists gave about \$1 million in campaign contributions last year as reported in an AP story from January 2018.<sup>29</sup>
- Most recently, Dominion has used its charitable contributions to buy support for its Atlantic Coast Pipeline project. *"Dominion Energy says it's being a good neighbor by handing out \$2 million in grants of around \$5,000 to \$10,000 in communities affected by its joint venture with fellow energy giants Duke Energy and Southern Co. Documents obtained by The Associated Press as well as interviews with company officials, supporters and opponents, show the considerable lengths Dominion has gone to as it builds support for its largest capital project. The company says its grant program is charity, and not part of what it calls its largest outreach program in Dominion history."*<sup>30</sup>

#### Conclusion:

South Carolina faces difficult choices in addressing the financial mess brought on by SCE&G's failed nuclear project. One lesson from this financial debacle should be to not make the mistake of entrusting the governance of electric utilities to the industry itself, particularly when utility customers have no choice in their electricity supplier.

South Carolina legislative leaders and the Governor should to be suspicious of any company like Dominion Energy that comes in making promises like rebating \$1,000 to every customer and lowering electricity rates that sound too good to be true.

It is critical that the members of the South Carolina General Assembly exercise due diligence in vetting the track record of any suitors for SCANA's remaining assets, including the exclusive right to serve its electricity customers. Any decision should be in the best interest of the ratepayers and the future economic prosperity of the state. On both these counts, Dominion Energy fails.

About the author: Glen Besa served as Sierra Club Virginia Chapter director until his retirement in May 2016. In his twenty years with the Sierra Club, he worked on a range of environmental concerns, most notably energy over the last decade. In that time, he has followed Dominion Energy closely on issues from coal ash to clean energy. As Virginia Sierra Club director, he oversaw the club's participation and intervention in administrative proceedings and litigation related to Dominion Energy activities in Virginia including its Integrated Resource Plans, Certificates of Public Convenience and Necessity, Rate Adjustment Clauses and lawsuits related to coal ash and coal and gas fired power plants. Contact Glen at [glenbesa@gmail.com](mailto:glenbesa@gmail.com)/804-387-6001

<sup>29</sup> Facing new scrutiny, powerful utility turns to old friends, Associated Press (January 29, 2018) <https://apnews.com/c994e09470254d6c95add4f78c43255>

<sup>30</sup> Documents reveal immense outreach on Atlantic Coast Pipeline, Associated Press (march 8, 2018) <https://apnews.com/bb9e146130c94891a25e00332f5c3fbb>